



[4830-01-p]

## **DEPARTMENT OF THE TREASURY**

### **Internal Revenue Service**

#### **26 CFR Parts 31 and 301**

**[REG-163195-05]**

**RIN 1545-BG53**

Removal of the Qualified Payment Card Agent Program

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking and notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that will remove regulations relating to information reporting and backup withholding for the Qualified Payment Card Agent (QPCA) Program. This document also amends regulations to remove references to the QPCA Program and withdraws proposed regulations relating to the QPCA Program. Enactment of the payment card and third party network reporting requirements in the Housing Assistance Tax Act of 2008 made the QPCA Program obsolete. Because no payors have applied to be designated as a QPCA (and no payors have been designated as a QPCA), no taxpayers will be affected by these proposed regulations.

DATES: Comments and requests for a public hearing must be received by **INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-163195-05), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (REG-163195-05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-163195-05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michael Hara, (202) 317-5413; concerning the submission of comments and requests for a public hearing, Oluwafunmilayo Taylor, (202) 317-6901 (not toll-free calls).

SUPPLEMENTARY INFORMATION:

### **Background and Explanation of Provisions**

This document contains proposed regulations to remove deadwood provisions implementing the now obsolete QPCA Program. When finalized, the proposed regulations would remove §31.3406(g)-1(f), §301.6724-1(e) (1)(vi)(H), and §301.6724-1(f)(5)(vii). In addition, the proposed regulations would amend §301.6724-1(c)(6) to remove references to QPCAs. This document also withdraws proposed regulations (REG-163195-05) relating to the QPCA Program.

The QPCA Program was developed by the IRS to enhance the accuracy of section 6041 information reporting in transactions where a payment card, such as a

credit card, is accepted as payment. Under the QPCA Program, a payment card organization may apply to be designated as a QPCA. For this purpose, a payment card organization is an entity that sets the standards and provides the mechanism, either directly or indirectly through members and affiliates, for effectuating payment between a purchaser and a merchant in a payment card transaction. See §5.06 of Notice 2007-59, 2007-30 IRB 135 (July 23, 2007). Once designated, the QPCA may act on behalf of a payor/cardholder to solicit, collect, and validate the name and taxpayer identification number (TIN) of a payee/merchant, and provide that information to the payor/cardholder so that the payor/cardholder can meet its section 6041 reporting obligation, if any.

Enactment of section 6050W and changes to the regulations under section 6041 obsolete the QPCA Program by requiring payment card organizations, rather than payor/cardholders, to report payments made in payment card transactions to payees/merchants. See §1.6041-1(a)(1)(iv) (eliminating duplicate reporting under section 6041 if the payment is subject to reporting under section 6050W).

Section 6041(a) requires persons engaged in a trade or business and making payment in the course of such trade or business to another person of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of \$600 or more in any one taxable year to file information returns with the IRS and to furnish information statements to payees. Among other items, the payor must include the payee's name and TIN on the information return and the information statement. Section 3406(a)(1) requires a payor to withhold on any reportable payment (as defined in section 3406(b)(1)) if: (1) the

payee fails to furnish the payee's TIN to the payor as required; or (2) the Secretary notifies the payor that the TIN furnished by the payee is incorrect.

On January 31, 2003, temporary regulations relating to the IRS TIN Matching Program were published in the **Federal Register** (TD 9041) (68 FR 4922). Under the IRS TIN Matching Program, a participating payor may reduce name/TIN errors on information returns by contacting the IRS before filing to verify whether the name and TIN combination furnished by a payee matches IRS records. The 2003 temporary regulations permit a payor's authorized agent to participate in the IRS TIN Matching Program on behalf of the payor. Under the authority of these temporary regulations, the IRS issued Rev. Proc. 2003-9 (2003-1 CB 516 (February 24, 2003)) (see §601.601(d)(2)(ii)(b) of this chapter) to allow all payors, as well as a payor's authorized agent, to participate in the IRS TIN Matching Program.

A notice of proposed rulemaking (REG-116641-01) cross-referencing the 2003 temporary regulations was also published in the **Federal Register** (68 FR 4970) for January 31, 2003. The notice of proposed rulemaking contained additional proposed rules relating to the information reporting and backup withholding requirements for payment card transactions effectuated through a QPCA.

On February 24, 2003, Notice 2003-13 (2003-1 CB 513 (February 24, 2003)) (see §601.601(d)(2)(ii)(b) of this chapter) was published in the Internal Revenue Bulletin, announcing a proposed revenue procedure that would establish a procedure for a payment card organization to request a determination that it is a QPCA.

On July 13, 2004, final regulations relating to the information reporting requirements, information reporting penalties, and backup withholding requirements for

payment card transactions effectuated through a QPCA were published in the **Federal Register** (TD 9136) (69 FR 41938). The amendments implementing the QPCA Program were generally effective for payments made on or after January 1, 2005. The final regulations also made the temporary regulations implementing the TIN Matching Program permanent.

On August 2, 2004, Revenue Procedure 2004-42 (2004-2 CB 121 (August 2, 2004)) (see §601.601(d)(2)(ii)(b) of this chapter) was published in the Internal Revenue Bulletin, setting forth procedures for a payment card organization to request a determination that it is a QPCA. Also on August 2, 2004, Revenue Procedure 2004-43 (2004-2 CB 124 (August 2, 2004)) (see §601.601(d)(2)(ii)(b) of this chapter) was published in the Internal Revenue Bulletin, setting forth an optional procedure for payors who make payments in the course of their trade or business through payment cards to use Merchant Category Codes, or other similar codes to determine whether the payments are reportable under sections 6041 and 6041A.

On July 13, 2007, a notice of proposed rulemaking (REG-163195-05) proposing revisions to the QPCA Program allowing merchants to opt-out of the QPCA Program and permitting QPCA's to furnish certain payee notifications electronically was published in the **Federal Register** (72 FR 38534).

On July 23, 2007, Notice 2007-59 (2007-30 IRB 135 (July 23, 2007)) (see §601.601(d)(2)(ii)(b) of this chapter) was published in the Internal Revenue Bulletin, which provided a proposed revenue procedure that would supersede Rev. Proc. 2004-42 to revise procedures for a payment card organization to request a determination that it is a QPCA.

On July 30, 2008, Congress enacted the Housing Assistance Tax Act of 2008, Public Law 110-289, which added section 6050W to the Internal Revenue Code. Section 6050W requires payment settlement entities, including payment card organizations, to report payments made in settlement of payment card and third party network transactions. Regulations published under section 6050W and section 6041 provide, among other things, that payments required to be reported under section 6050W are not also required to be reported under section 6041. See §1.6041-1(a)(1)(iv). Because payment card organizations now have a reporting obligation with respect to payment card transactions, there is no longer a need for payment card organizations to solicit, collect, and verify payee/merchant names/TINs for the payor/cardholder. Thus, enactment of section 6050W made the QPCA Program obsolete. Accordingly, the regulations under §31.3406(g)-1(f), §301.6724-1(e)(1)(vi)(H), and §301.6724-1(f)(5)(vii) are proposed to be removed, §301.6724-1(c)(6) of the regulations is proposed to be amended, and the proposed regulations published in the **Federal Register** on July 13, 2007, are being withdrawn. In addition, Revenue Procedure 2004-42, Revenue Procedure 2004-43, Notice 2003-13, Notice 2003-37, and Notice 2007-59 are obsoleted. See §601.601(d)(2)(ii)(b).

### **Effective Date**

Sections 31.3406(g)-1(f), §301.6724-1(e)(1)(vi)(H), and §301.6724-1(f)(5)(vii) would be removed on the date these regulations are published as final regulations in the **Federal Register**. Amendments to §301.6724-1(c)(6) would be effective on the date these regulations are published as final in the **Federal Register**.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the “Addresses” heading. The Treasury Department and the IRS requested comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request.

A public hearing will be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### **Effect on Other Documents**

The following publications are obsolete as of the date these regulations are published as final regulations in the **Federal Register**: Notice 2003-13, (2003-1 CB 513); Notice 2003-37 (2003-1 CB 1121); Rev. Proc. 2004-42 (2004-2 CB 121); Rev.

Proc. 2004-43 (2004-2 CB 124); and Notice 2007-59 (2007-30 IRB 135) (see §601.601(d)(2)(ii)(b) of this chapter).

### **Withdrawal of Notice of Proposed Rulemaking**

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-163195-05) that was published in the **Federal Register** on July 13, 2007 (72 FR 38534) is withdrawn.

### **Drafting Information**

The principal author of these proposed regulations is Michael Hara of the Office of Associate Chief Counsel (Procedure and Administration).

### **List of Subjects**

#### **26 CFR Part 31**

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

#### **26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Income taxes, Gift taxes, Penalties, Reporting and recordkeeping requirements.

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR parts 31 and 301 are proposed to be amended as follows:

#### **PART 31--EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE**

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

**§31.3406(g)-1 [Amended]**

Par. 2. Section 31.3406(g)-1 is amended by removing paragraph (f).

**PART 301—PROCEDURE AND ADMINISTRATION**

Par. 3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805. \* \* \*

**§301.6724-1 [Amended]**

Par. 4. Section 301.6724-1 is amended by:

a. Removing the language “or a qualified Payment Card Agent (QPCA) as defined in §31.3406(g)-1(f)(2)(v) of this chapter,” from the introductory text of paragraph (c)(6).

b.. Removing paragraphs (e)(1)(vi)(H) and (f)(5)(vii).

John Dalrymple

Deputy Commissioner for Services and Enforcement.